

CHAPTER 11 OVERPAYMENTS

[Prior to 2/11/87, Human Services[498]]

PREAMBLE

These rules define the department's policies regarding the collection of overpayments. These rules outline what information must be maintained for each claim for an overpayment and how the payments are to be applied. These rules also outline the criteria for withholding part or all of federal or state refunds or other state payments owed to the debtor and how they are applied to the debtor's claim for the overpayment.

441—11.1(217) Definitions.

"Current" shall mean that amount which is due and owing within the previous 12 months from the date of submission to the department of administrative services or that amount which is due and owing from the date the repayment agreement or court order is implemented, if less than 12 months, before the date of submission to the department of administrative services.

"Current repayment" shall mean that payment of the cumulative sum due and owing in accordance with a repayment agreement or court order for the preceding 12 months or the date of the order or agreement if the order or agreement is more recent.

"Debtor" shall mean a current or former recipient of public assistance that has been determined by the department to be responsible for the repayment of a particular overpayment. For food stamps, "debtor" shall include all adult members of the food stamp household participating at the time the overpayment occurred. For child care assistance, "debtor" may include the current or former provider or current or former recipient of child care assistance.

"Department" shall mean the department of human services.

"Eligible overpayment" means any overpayment which is not under investigation or appeal.

"Overpayment" shall mean the dollar amount of public assistance by program received by or on behalf of a person which is in excess of what is allowed by law for any given month(s).

"Public assistance" shall mean family investment program, food stamps, Medicaid, state supplementary assistance, PROMISE JOBS, child care assistance, refugee cash assistance, and HAWK-I program.

"Repayment agreement" shall mean an agreement entered into voluntarily between the department and the debtor for the repayment of overpayments. Agreements shall be made on:

1. Form 470-0495, Repayment Contract;
2. Form 470-0338, Demand Letter for Food Stamp Agency Error Overissuance;
3. Form 470-3486, Demand Letter for Food Stamp Intentional Program Violation Overissuance;
4. Form 470-3487, Demand Letter for Food Stamp Inadvertent Household Error Overissuance;
5. Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance;
6. Form 470-3489, Demand Letter for FIP/RCA Intentional Program Violation Overissuance;
7. Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance;
8. Form 470-3990, Demand Letter for PROMISE JOBS Agency Error Overissuance;
9. Form 470-3991, Demand Letter for PROMISE JOBS Client Error Overissuance;
10. Form 470-3992, Demand Letter for PROMISE JOBS Provider Error Overissuance;
11. Form 470-2891, Demand Letter for Medicaid or State Supplementary Assistance Overpayment;
12. Form 470-3627, Demand Letter for Child Care Assistance Provider Error Overissuance;
13. Form 470-3628, Demand Letter for Child Care Assistance Client Error Benefit Overissuance;
14. Form 470-3984, Notice of Healthy and Well Kids in Iowa (HAWK-I) Premium Overpayment.

“*Written notification*” shall refer to the written notification sent to a current or former recipient of public assistance by the department on Form 470-1668, Notice of Setoff of an Iowa Income Tax Refund for Debts Owed the Department of Human Services, Form 427-0538, Notice of Income Offset Against State Warrants for Debts Owed the Department of Human Services, and Form 427-0539, Notice of Income (Payroll) Offset Against State Warrants for Debts Owed the Department of Human Services.

441—11.2(217) Accounts. The department shall maintain an account for each overpayment that has occurred. The account shall contain the following:

- 11.2(1)** A debtor name and account number.
- 11.2(2)** Program in which the overpayment occurred.
- 11.2(3)** Date overpayment was discovered.
- 11.2(4)** Inclusive dates of the overpayment.
- 11.2(5)** Total dollar amount of each overpayment.
- 11.2(6)** Primary cause of the overpayment.
- 11.2(7)** Any transaction applied to this overpayment.

441—11.3(217) Application of payment. The department shall apply any payment received to the debtor’s overpayment(s) as follows:

11.3(1) *Application of payment to single program area.* Payment shall be applied only to eligible overpayments. If there is more than one eligible overpayment in a program, payment shall be applied first to all overpayments which have an agreement in chronological order of discovery and then to overpayments which do not have an agreement in chronological order of discovery until all overpayments have been paid in full or the full payment amount has been exhausted.

For food stamps, payment shall also be applied first to all overpayments with an agreement and then to overpayments without an agreement. Within those two groupings, payment shall be applied first to state-only overpayments in chronological order of discovery, then to intentional program violation (IPV) overpayments in chronological order of discovery, then to inadvertent household error (IHE) overpayments in chronological order of discovery, and then to agency error overpayments in chronological order of discovery.

11.3(2) *Application of payment to multiple program areas.* If there are overpayments in more than one program area of public assistance, payments received shall be applied to those program areas as indicated by the mode of repayment (food stamp coupons, FIP benefits) or as indicated by the client at the time of payment.

11.3(3) *Application of undesignated cash payment.* If an undesignated cash payment is received it shall be applied to each program area proportionally based on the percentage to the cumulative balance of all overpayments in all program areas combined.

11.3(4) *Application of payment prohibited.* No payments shall be applied to an overpayment(s) that is under investigation for fraud or is in an appeal status.

441—11.4(217) Setoff against state income tax refund, rebate, or other state payments, including, for example, state employee wages.

11.4(1) *Criteria for setoff.*

a. A claim against a debtor may be made by the department for public assistance overpayments when:

- (1) A debtor has failed to negotiate a repayment agreement for that program area of public assistance, or
- (2) A repayment agreement is not current, and
- (3) The cumulative balance of the applicable overpayments in 11.4(1) “a”(1) and (2) exceeds \$50.

b. A claim against a debtor will not be made by the department for overpayments when:

- (1) The overpayment is under investigation for fraud or is in an appeal status, or
- (2) The overpayment is being recovered through grant or benefit reduction.

11.4(2) *Frequency of submission.* The department shall submit to the department of administrative services on or about the first working day of the month a list of those debtors who have an overpayment meeting the criteria in subrule 11.4(1).

11.4(3) *Pre-setoff notice.* The department shall mail written notification to a debtor to inform the debtor of the amount the department intends to claim and apply to overpayments in each program when:

a. The department is notified by the department of administrative services that the debtor is entitled to a state income tax refund, rebate, or other state payment;

b. The department makes claim against the debtor.

11.4(4) *Method for division of joint payments.* When either spouse wishes to request a division of a jointly or commonly owned right to payment, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, the spouse's proportionate share of a jointly or commonly owned right to payment, as determined by the department of administrative services, shall be released by the department of administrative services unless:

a. Other claims are made on that portion of the jointly or commonly owned right to payment, or

b. That spouse was also a member of the same household and the spouse's income and resources were or should have been considered in the calculation of public assistance.

11.4(5) *Appeal rights.* When a debtor wishes to contest the claim of the department, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, a hearing shall be granted pursuant to rules in 441—Chapter 7.

If the department is upheld in the final decision, the setoff process shall continue and the refund, rebate, or other state payment shall be applied to the appropriate delinquent overpayments. If the department is reversed in the final decision, the debtor's refund, rebate, or other state payment shall be released to the debtor by the department of administrative services.

11.4(6) *Debt setoff.* If the department has not received a request for an appeal hearing or a request for division of a jointly or commonly owned right to payment within 15 days after the date the written notification is mailed, the department shall notify a debtor of the final decision regarding the claim by mailing the Debt Setoff Credit Letter, Form 470-1667 to the debtor.

11.4(7) *Application of setoff.* The department shall apply any setoff received from the department of administrative services as a result of this rule to the debtor's overpayments as indicated on the written notification mailed to the debtor and in accordance with rule 441—11.3(217).

Any amount remaining after the setoff shall be released back to the individual.

441—11.5(234) Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages.

11.5(1) *Criteria for setoff.*

a. Individuals not participating in the food stamp program shall be subject to collection action through the treasury offset program (TOP) which includes, but is not limited to, federal salary offset and federal tax refund offset. Individuals shall be referred to TOP if they are delinquent in repaying their food stamp overissuance and there is a claim or combination of claims with an unpaid balance which exceeds \$25. No claim which is less than three months old or more than ten years old as of January 31 of the offset year shall be referred. Exception: Claims which have had a final judgment entered are not subject to the ten-year time limit.

Individuals are delinquent in repaying their food stamp overissuance if:

(1) A repayment agreement has not been signed and 180 days have elapsed since the date of the second demand letter minus any days the claim was not subject to collection action because of an appeal or because the claim was referred for court prosecution.

(2) A repayment agreement has been signed but the individual responsible for repaying the debt has failed to make the agreed-upon payments and has failed to make up the missed payments. The individual shall be referred to TOP when 180 days have elapsed since the first of the month following the month that the individual failed to make the agreed-upon payment and has not subsequently made up the missed payment.

b. A claim against an individual will not be referred to TOP by the department of inspections and appeals (DIA) for overpayments when:

(1) The overpayment is under investigation for fraud or is in an appeal status, or

(2) The overpayment is being recovered through benefit reduction.

11.5(2) *Setoff under TOP.* DIA shall, by December 1 of each year, submit a notification of liability for delinquent claims to the Department of the Treasury.

11.5(3) *Pre-setoff notice.* DIA shall mail Form 470-3488, Treasury Offset Program (TOP) 60-Day Notice, to a debtor identifying the amount the department intends to refer to TOP for offset.

11.5(4) *Offset fee.* For each year the Treasury Department effects an offset against an individual referred to TOP, Treasury will charge the individual for one offset.

11.5(5) *Appeal rights.* When an individual wishes to contest the delinquent status of a claim as identified by DIA, a written request shall be submitted to DIA within 60 days of the date of the pre-offset notice. When the request is received within the 60-day limit, a review shall be granted.

DIA shall determine if the claim is past due and legally enforceable and shall notify the individual in writing of the decision.

11.5(6) *Application of setoff.* DIA shall apply any setoff received as a result of this rule to the individual's food stamp overpayments.

Any amount remaining after the setoff shall be released back to the individual.

These rules are intended to implement Iowa Code section 217.34 as amended by 2003 Iowa Acts, House File 534, section 209.

[Filed 11/1/84, Notice 9/12/84—published 11/21/84, effective 1/1/85]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

[Filed 10/12/90, Notice 8/22/90—published 10/31/90, effective 1/1/91]

[Filed 1/16/92, Notice 11/27/91—published 2/5/92, effective 4/1/92]

[Filed emergency 9/19/96—published 10/9/96, effective 9/21/96]

[Filed 12/12/96, Notice 10/9/96—published 1/1/97, effective 3/1/97]

[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 8/5/98]

[Filed 2/14/01, Notice 11/29/00—published 3/7/01, effective 5/1/01]

[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 5/1/02]

[Filed 9/22/03, Notice 7/23/03—published 10/15/03, effective 12/1/03]

[Filed emergency 11/16/05—published 12/7/06, effective 12/1/05]